

52 ✓
IN THE HIGH COURT OF KARNATAKA AT BANGALORE.

Dated this the 15th day of April, 1998.

BEFORE

HON'BLE MR. JUSTICE S.R. VENKATESHA MURTHY

H.R.R.P. NUMBER 154 of 1996.

Between:-

P.Manjunath,
s/o Late N.Puttachannappa,
aged 34 years,
Shop Premises No.6,
Chamarajpet, Bangalore-18.

PETITIONER

(by Sri. S.Gandhara Aithal for
petitioner)

And:-

Sat.R.Vinodhalakshmi,
w/o R.Subramani Setty,
aged about 42 years,
R/at No.20, III Cross,
I Main Road, Chamarajpet,
Bangalore-18.

RESPONDENT

(By Sri.R.Hirannaiah for respondent)

--


101

This Revision being reserved for orders this day, the Court made the following:-

ORDER

The tenant who unsuccessfully resisted eviction under section 21 (1)(h) of the Karnataka Rent Control Act, 1961 (herein after called the 'Act') has preferred this Revision.


2. The petitioner-landlady sought eviction of the respondent from the schedule premises on the ground that the premises is reasonably and bonafide required for setting up of her husband R.Subranany Setty in vegetable business in the schedule premises. The petitioner's husband ~~she~~ had taken a premises in Chamarajpet on mortgage for four years was running a vegetable business there and after the expiry of the period of mortgage, he had to surrender the possession of the premises . Thus, he has no other alternative premises to carry on the business. The respondent-tenant who




has been well established in business
can easily secure alternate accommodation
and would suffer no hardship.

3. The respondent sought to allege
that at the time of taking the premises on
rent, he has paid an advance of Rs.10,000/-
and the present rent is Rs.400/- per month.
The respondent-tenant sought to allege that
he has a large family to maintain and he
would be seriously affected if he were to be
evicted from the schedule premises.

4. The trial court found that the
claim for eviction was reasonable and bonafide;
that the respondent-tenant would not be put to
greater hardship by being evicted from the
premises and that partial eviction was not
feasible. The trial court found that the
petitioner's husband was required to be provided
with suitable employment and therefore petitioner's
requirement was reasonable as well as bonafide.
Indeed, the petitioner herself was stated to



be earning Rs.3,500/- and she wanted that her husband should be properly settled in business. The requirement of the petitioner cannot be assailed as unreasonable or lacking in bonafides. Even if the petitioner were to be earning Rs.3,500/- as a teacher, there was no reason why the petitioner should not see that her husband who has experience in running vegetable business and business in articles such as plasticware, should not be adequately provided for. The contention on behalf of the respondent-tenant was that the petitioner was not sure as to what were the nature of the business her husband wanted to set up and the ~~nebulousness~~^{of} the claim affected the reasonableness and bonafides of the petitioner. What has to be noticed is that the petitioner's husband undisputably was running a vegetable business having taken a premises on mortgage and surrender possession of the premises later, on the redemption of the mortgage. The evidence on behalf of the petitioner would show that




the petitioner's husband's claim cannot be rejected as unfounded. Vending vegetables or books or plastic articles does not require any specialised knowledge by the intending businessman. Such petty trades are started day in and day out by a considerably number of persons and without any experience at that. The trial court, in my opinion, has rightly appreciated the evidence before it. There has not been any instance point out where the trial court ought to have drawn a different inference. The finding of the trial court about reasonableness and bonafides in the circumstances of the case is not open to challenge.


5. The learned Counsel for the respondent-tenant sought to vehemently argued that the premises is 9'x16'. The trial court ought to have adopted a live and let live attitude by bifurcating the premises into 4½'x16' or 5'x16' and giving 4½'x11' to the




respondent-tenant. The width of the shop is hardly 9' and if it were to be bifurcated as suggested thickness of the bifurcating wall would further reduce the effective area available for the parties. The respondent-tenant, in his evidence, ought to have stated all these circumstances and what is the least extent of the premises he would be willing to settle for and allow the trial court to take a decision thereon. The contention of the respondent-tenant before the trial court was that he would also need the entire premises and not a part thereof. Even otherwise, the extent of 9'x16' cannot be regarded as such a large extent which could conveniently ^{be} bifurcated into two portions to enable the petitioner and the respondent to pursue their occupations without being inconvenienced. Sub-section 4 of section 21 of the Act stipulates that a partial eviction could be considered only if the court is satisfied



that no hardship would be caused either to the tenant or to the landlord by passing the decree in respect of a part of the premises and in that event pass a decree in respect of such part only. In the absence of any evidence showing that the parties could carry on their business by bifurcating such a small premises as 9'x16' it is difficult to sustain the claim of the respondent-tenant that he could settle in a lesser extent of the premises. Indeed such a small extent of building by being bifurcated into two portions in any ratio suggested by the respondent-tenant would affect both the petitioner and the landlord. None of them is likely to conveniently carry on their business in the premises. The finding recorded by the trial court in this behalf, is not open to challenge in this revision. In these circumstances, the revision has no merit and has to fail.



6. The learned Counsel for the respondent-tenant sought to contend that alternative, the respondent-tenant may be granted five years' time to surrender vacant possession of the premises. This request, in my opinion, is too extravagant to be countenanced. Indeed grant of such a large amount of time is bound to be counter protective and the prospect of the respondent-tenant securing alternate accommodation is bound to fail. With a view to balancing the claim of both the petitioner and the respondent, I am of the opinion that the revision petitioner-tenant should be granted time till the end of November, 1999 to surrender possession of the premises to the landlord subject to the condition that the revision petitioner files an affidavit into the trial court agreeing to surrender vacant possession of the schedule premises without letting any one else into the premises, within four weeks from this day and subject to the further condition that the



respondent tenant promptly and regularly pays all the arrears of rent upto date and continues to pay the rent till date of delivery of possession of the premises and in the event of any two defaults being committed, the petitioner-landlord shall be entitled to recover possession of the property through Court without regarding time granted as aforesaid. The revision is dismissed with costs.

Sd/-
JUDGE

PV